**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 15533 of 2005**

**For Approval and Signature:**

**HONOURABLE MR. JUSTICE B.J.SHETHNA**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**NITESHBHAI RAMJIBHAI VAGHELA - Petitioner(s)**
**Versus**
**COMMISSIONER OF INCOME TAX & 2 - Respondent(s)**

==========

**Appearance :**

MR ND SONGARA for Petitioner(s) : 1,MR VK SOLANKI for Petitioner(s)
MR MANISH R BHATT for Respondent(s) : 1 - 3.

==========

**CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA**

**and**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

**Date : 17/11/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)**

1. O.A. No. 207/2004 filed by the petitioner – applicant was dismissed on merits on 22.2.2005 by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad ( for short 'Tribunal'), in absence of learned advocate for the petitioner. Review Application No. 24/2005 was filed with M.A. No. 246/2005 in O.A. No. 207/2004 before the learned Tribunal for recalling the order of the learned Tribunal and deciding the matter afresh after hearing the learned counsel for the applicant – petitioner. The same was rejected by the learned Tribunal by its impugned order dated 10.5.2005 on the ground that it was time barred and that the Tribunal has no power to condone the delay. Both these impugned orders are challenged in this petition.

2. Having heard the learned counsel for the parties and having perused the impugned judgment and order dated 22.2.2005 passed by the learned Tribunal dismissing the O.A. No. 207/2004, it is clear that in absence of the learned counsel for the petitioner – applicant, the matter was decided by the learned

Tribunal on merits. On this ground alone, the impugned order is required to be quashed and set aside. However, it was submitted by Ms. Bhatt learned advocate for the respondents that the matter was squarely covered against the petitioner by the Supreme Court judgment, therefore, it would be an exercise in futility in sending the matter back. If it is covered by the Supreme Court judgment, then, in terms of the said Supreme Court judgment, the matter can be decided by the learned Tribunal, but it can be done only after hearing the applicant – petitioner or his counsel.

3. In view of the above discussion, this petition is allowed and the impugned judgment and order passed by the learned Tribunal on 22.2.2005 dismissing the O.A. No. 207/2004, and consequently, the order passed in R. A. No. 24/2005 with M.A. No. 246/2005 filed in O.A. No. 207/2004 on 10.5.2005, is hereby quashed and set aside. The matter is remitted to the learned Tribunal for deciding the same afresh in accordance with law after extending an opportunity of hearing to the applicant by restoring O.A. No. 207/2004 to its

original number. Rule made absolute accordingly with no order as to costs.

**(B. J. SHETHNA, J.)**

**(H.B. ANTANI, J.)**

mandora/